

REMARKS

This Amendment is submitted in response to the Office Action dated April 24, 2007. In the Office Action, the Patent Office rejected Claims 1, 4-8 and 10 under 35 U.S.C. §102(b) as being anticipated by *Schwender* (U.S. Patent No. 5,535,461). Further, the Patent Office rejected Claims 1, 4-8 and 10 under 35 U.S.C. §103(a) as being unpatentable over *Saylor* (U.S. Patent No. 5,308,670) in view of *Hough* (U.S. Des. No. 433,660), *Walton* (U.S. Patent No. 6,120,876) and *Taylor* (U.S. Patent No. 2,746,571); rejected Claim 9 under 35 U.S.C. §103(a) as being unpatentable over *Schwender* in view of *Davis* (U.S. Des. No. 161,572); and rejected Claim 9 under 35 U.S.C. §103(a) as being unpatentable over *Saylor* in view of *Hough*, *Walton* and *Taylor* as applied to Claim 1, and further in view of *Davis*.

Applicant appreciates the opportunity provided by Examiner Steven Castellano at the Patent Office to hold a telephonic interview on September 18, 2007 with Attorney Luke Barbin. Applicant further appreciates the helpful suggestions and recommendations made by Examiner Castellano to amend independent Claim 1 in view of the references cited in the Office Action. During the telephonic interview, Examiner Castellano provided suggestions for amending independent Claim 1 to overcome the rejections by the Patent Office and to place the claims of the application in allowable form. Examiner Castellano and Luke Barbin discussed a clarification of the description of the base,

the first stopper and the support element in independent Claim 1. Examiner Castellano indicated that independent Claim 1 (and, therefore, dependant Claims 4-8 and 10) are not anticipated by *Schwender* under 35 U.S.C. §102(b) by incorporating the suggested amendments to independent Claim 1. Namely, independent Claim 1 now defines the top surface of the base, its planar configuration between the first stopper and the support element and its parallel relationship to the surface between the first stopper and the support element. Further, Examiner Castellano and Luke Barbin discussed the rejection of Claims 1, 4-8 and 10 under 35 U.S.C. §103(a) as being unpatentable over *Saylor* in view of *Hough*, *Walton* and *Taylor*. In accordance with the suggestions made by Examiner Castellano during the telephonic interview, Applicant amended Claims 1 and 8-10. Applicant asserts that the amendments to the claims overcome the rejections made by the Patent Office and place the application in condition for allowance. Notice to that effect is requested.

With respect to the rejection of Claims 1, 4-8 and 10 under 35 U.S.C. §102(b) as being anticipated by *Schwender*, Applicant submits that the amendments to Claims 1, 8 and 10 overcome the rejection under 35 U.S.C. §102(b) and place the application in condition for allowance. Notice to that effect is requested.

In Office Action, the Patent Office alleges:

Schwender discloses a sun bathing towel system capable of holding containers, the system is placed on a surface (liner member 16), a first stopper is defined

by elements 58 and 60, a base (towel member 12) defines a perimeter, first end, second end, width, length, first edge, second edge, a top side, a bottom side, an interior and an exterior, the thickness of the base is uniform, a support element (stake 14 at left side of FIG. 1) is connected to the second end while the first stopper is connected to the first end.

Independent Claim 1, as amended, requires that the top surface of the base is generally planar between the first stopper and the support element. Moreover, independent Claim 1, as amended, requires that the top surface of the base is substantially parallel to the surface between the first stopper and the support element.

Schwender merely discloses a sunbathing towel system having a support pole structure 18, connectable with a towel member 12, for supporting a portion of the towel member 12 in a lean-to type fashion. Further, the towel system has four stake members 14 to attach the towel member 12 to a plot of stand at towel eyelets 20 positioned two at two corners of the towel member 12 and two along the perimeter of the towel member 12. This allows a section 32 of the towel member 12 to be utilized, in combination with the support pole structure 18 in the lean-to type fashion. The support pole structure 18 may consist of two separate pole members but preferably includes first and second pole members 54, and at least one horizontal connecting member 58. The horizontal connecting member 58 is attachable between the first and second vertical pole members 54. Food and/or drink items may be stored

under the lean-to portion of the towel member 12 to protect them from excessive exposure to the sun (See FIGS. 1, 5 and 6).

Nowhere does *Schwender* disclose that the top surface of the base is generally planar between the first stopper and the support element as required by independent Claim 1, as amended. Further, nowhere does *Schwender* disclose that the top surface of the base is substantially parallel to the surface between the first stopper and the support element as required by independent Claim 1, as amended.

On the contrary, *Schwender* merely discloses a non-planar configuration of the towel member 12 between the horizontal connecting member 58 and the stake members 14 at two corners of the towel member 12. (See stake member 14 at left side of FIG. 1 which was referred to as the "support element" in the Office Action.) Still further, *Schwender* merely discloses that section 32 of the towel member 32 is not even remotely parallel to the sand 11 or the liner member 16 between the horizontal connecting member 58 and the stake members 14 along the perimeter of the towel member 12. Moreover, and despite the Patent Office's contention, *Schwender's* sun bathing towel system is incapable of holding containers between the horizontal connecting member 58 and the stake members 14 along the perimeter of the towel member 12. In fact, *Schwender* merely discloses storing drink items under the lean-to section 32 of the towel member 12 to avoid excessive exposure to the sun.

Under 35 U.S.C. §102, anticipation requires that a single reference disclose each and every element of Applicant's claimed invention. *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ 2d. 1241, 1245 (Fed. Cir. 1986). Moreover, anticipation is not shown even if the differences between the claims and the references are "insubstantial" and one skilled in the art could supply the missing elements. *Structure Rubber Products Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984).

In view of the foregoing, since *Schwender* fails to disclose the elements specifically defined in amended independent Claim 1, Applicant asserts that the rejection of Claims 1, 4-8 and 10 under 35 U.S.C. §102(b) has been overcome and should be withdrawn. Notice to that effect is requested.

Claims 4-8 and 10 depend from independent Claim 1. These claims are further believed allowable over the reference of record for the same reasons set forth with respect to their parent Claim 1 since each sets forth additional structural elements of Applicant's container holder.

With respect to the rejection of Claims 1, 4-8 and 10 under 35 U.S.C. §103(a) as being unpatentable over *Saylor* in view of *Hough, Walton and Taylor*, Applicant submits that the amendment to independent Claim 1 overcomes the rejection under 35 U.S.C. §103(a) and places the application in condition for allowance. Notice to that effect is requested.

In the Office Action, the Patent Office alleges:

Saylor discloses a garage floor cover of rectilinear configuration with four raised sides forming a basin. Saylor is capable of holding containers. Saylor discloses all of the elements of the invention. However, Saylor fails to disclose the uniform thickness limitation from first edge to second edge (or across the width). Hough teaches a vehicle parking mat with only two opposed raised edges. Walton teaches a garage floor protector with three raised edges allowing drive through on a single side of a rectangular configuration. Taylor teaches one raised edge for a vehicle mat. It would have been obvious from the teachings of mats with less than four raised edges that the Saylor floor cover could be modified to remove the raised edges at the first and second opposed edges of the Saylor floor cover to provide uniform thickness limitation as motivated by the lack of need to form a basin and the maintaining of the covers ability to capture drips of dirt, grease and oil from the vehicle undercarriage. The removal of the raised edges is also motivated by savings in material and manufacturing.

Regarding Claim 10, the auxiliary device is the portion of the base that wraps around the stopper.

Independent Claim 1, as amended, requires that the base has a thickness defined between a top surface of the base and a bottom surface of the base wherein the thickness of the base is generally continuous and uniform between the top surface and the bottom surface from the first end of the base to the second end of the base and from the first edge of the base to the second edge of the base. Further, independent Claim 1, as amended requires that the axis of symmetry of the first stopper is generally parallel to the axis of symmetry of each of the plurality of containers. Further, independent Claim 1, as amended, requires that the top surface of the base is generally

planar between the first stopper and the support element. Moreover, independent Claim 1, as amended, requires that the top surface of the base is substantially parallel to the surface between the first stopper and the support element.

Contrary to the assertions of the Patent Office, *Saylor* merely teaches a vinyl pad with raised sides. The pad is placed beneath a vehicle in a garage to collect melting snow, water, sand, salts, solvents, oils, mud, dirt or the like. The outer edge of the pad is folded over to create a pocket. A piece of rubber hose the length of the pocket is inserted into the pocket to raise all four sides of the pad. A basin is created in the pad to contain elements falling onto the pad. In addition, *Hough* merely teaches a vehicle parking mat with a plurality of opposed raised members. Further, *Walton* merely teaches a garage floor protector for placement in the parking area of a motor vehicle. The garage floor mat has left and right inwardly sloping lateral surfaces, with a longitudinal channel or trough extending down the center of the device. The trough slopes rearwardly, to collect runoff from the lateral slopes and guide the runoff to the rear center of the device where it is removed from the protector and garage by a retractably extendable channel. Moreover, *Taylor* merely teaches a portable wheel position indicator that has a mat having a ribbed or otherwise roughened surface.

With respect to independent Claim 1, clearly, none of *Saylor, Hough, Walton* and/or *Taylor*, taken singly or in combination, teaches or suggests that the base has a thickness defined between a top surface of the base and a bottom surface of the base wherein the thickness of the base is generally continuous and uniform between the top surface and the bottom surface from the first end of the base to the second end of the base and from the first edge of the base to the second edge of the base as required by independent Claim 1, as amended. Further, none of *Saylor, Hough, Walton* and/or *Taylor*, taken singly or in combination, teaches or suggests that the axis of symmetry of the first stopper is generally parallel to the axis of symmetry of each of the plurality of containers as required by independent Claim 1, as amended. Still further, none of *Saylor, Hough, Walton* and/or *Taylor*, taken singly or in combination, teaches or suggests that the top surface of the base is generally planar between the first stopper and the support element as required by independent Claim 1, as amended. Moreover, none of *Saylor, Hough, Walton* and/or *Taylor*, taken singly or in combination, teaches or suggests that the top surface of the base is substantially parallel to the surface between the first stopper and the support element as required by independent Claim 1, as amended.

Saylor actually teaches away from Applicant's container holder. *Saylor* teaches that the outer edge 1 of the trimmed pad

6 is folded over, as at 3, and RF' butt welded, at 4. As a result, the pad has a thickness at its edge 1 that is substantially thinner than a thickness less proximate to the outer edge 1 and, therefore, the thickness of the pad is not continuous or uniform across the pad. (See outer edge of FIG. 3 between reference numeral 4 and reference numeral 1, emphasis added.) Further and because *Saylor* teaches a pad folded over forming pockets with rubber hoses placed therein at all four sides, *Saylor* teaches away from a pad with a top surface that is generally planar between a first stopper and a second stopper or that is generally parallel to the surface on which it sits between the first stopper and the support element as required by independent Claim 1, as amended. Moreover, *Saylor* teaches a basin for collecting liquids and/or other vehicle droppings and fails to perform its function as a container for the liquids and/or the droppings without pockets with rubber hoses at all four sides. *Hough* merely teaches a vehicle parking mat with a plurality of raised edges. *Walton* merely teaches a garage floor protector with a plurality of raised edges and sloped surfaces. *Taylor* merely teaches a portable wheel position indicator having a matt with a ribbed or otherwise roughened surface adjacent to one raised edge at one end of the indicator.

Therefore, none of *Saylor*, *Hough*, *Walton* and/or *Taylor*, taken singly or in combination, teaches or suggests that the base has a thickness defined between a top surface of the base and a

bottom surface of the base wherein the thickness of the base is generally continuous and uniform between the top surface and the bottom surface from the first end of the base to the second end of the base and from the first edge of the base to the second edge of the base as required by independent Claim 1, as amended. Further, none of *Saylor*, *Hough*, *Walton* and/or *Taylor*, taken singly or in combination, teaches or suggests that the axis of symmetry of the first stopper is generally parallel to the axis of symmetry of each of the plurality of containers as required by independent Claim 1, as amended. Still further, none of *Saylor*, *Hough*, *Walton* and/or *Taylor*, taken singly or in combination, teaches or suggests that the top surface of the base is generally planar between the first stopper and the support element as required by independent Claim 1, as amended. Moreover, none of *Saylor*, *Hough*, *Walton* and/or *Taylor*, taken singly or in combination, teaches or suggests that the top surface of the base is substantially parallel to the surface between the first stopper and the support element as required by independent Claim 1, as amended.

Moreover, a person of ordinary skill in the art would never have been motivated to combine *Saylor*, *Hough*, *Walton* and/or *Taylor* in the manner suggested by the Patent Office in formulating the rejection under 35 U.S.C. §103(a). Applicant submits that the Patent Office is merely "piece-mealing" references together, providing various teachings and positively

defined limitations of Applicant's container holder to deprecate the claimed invention. Of course, hindsight reconstruction of Applicant's invention is impermissible.

With the analysis of the deficiencies of *Saylor, Hough, Walton* and/or *Taylor* in mind, no reason or suggestion in the evidence of record exists why one of ordinary skill in the art would have been led to combine *Saylor, Hough, Walton* and/or *Taylor* in the manner suggested by the Patent Office in formulating the rejection under 35 U.S.C. §103(a). Therefore, *prima facie* obviousness has not been established by the Patent Office as required under 35 U.S.C. §103(a).

It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. In re Simon, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

Applicant further submits that one having ordinary skill in the art at the time of Applicant's invention would never have been motivated to modify *Saylor, Hough, Walton* and/or *Taylor* in the manner suggested by the Patent Office in formulating the rejection under 35 U.S.C. §103(a).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most, if not all, elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of all the teachings

of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1545, 220 USPQ 193 (Fed. Cir. 1983).

Applicant submits that the Patent Office has merely located components of Applicant's claimed invention. However, that the art disclosed components of Applicant's claimed invention, either separately or used in other combinations, is insufficient. A teaching, suggestion, or incentive must exist to make the combination made by Applicant. *Interconnect Planning Corp. v. Feil*, 774 F. 2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

Even assuming that one having ordinary skill in the art could somehow have combined *Saylor, Hough, Walton* and/or *Taylor* as set forth by the Patent Office, the resultant combination still lacks the novel elements positively recited in independent Claim 1, as amended. Further, *Saylor, Hough, Walton* and/or *Taylor*, taken singly or in combination, do not teach or suggest that the base has a thickness defined between a top surface of the base and a bottom surface of the base wherein the thickness of the base is generally continuous and uniform between the top surface and the bottom surface from the first end of the base to the second end of the base and from the first edge of the base to the second edge of the base as required by independent Claim 1, as amended. Still further, *Saylor, Hough, Walton* and/or *Taylor*, taken singly or in combination, do not teach or suggest that the

axis of symmetry of the first stopper is generally parallel to the axis of symmetry of each of the plurality of containers as required by independent Claim 1, as amended. Still further, *Saylor, Hough, Walton and/or Taylor*, taken singly or in combination, do not teach or suggest that the top surface of the base is generally planar between the first stopper and the support element as required by independent Claim 1, as amended. Moreover, *Saylor, Hough, Walton and/or Taylor*, taken singly or in combination, do not teach or suggest that the top surface of the base is substantially parallel to the surface between the first stopper and the support element as required by independent Claim 1, as amended.

In view of the foregoing remarks and amendments, Applicant respectfully submits that the rejection of Claims 1, 4-8 and 10 under 35 U.S.C. §103(a) as being unpatentable over *Saylor* in view of *Hough, Walton and/or Taylor* has been overcome and should be withdrawn. Notice to that effect is requested.

Claims 4-8 and 10 depend from independent Claim 1. These claims are further believed allowable over the references of record for the same reasons set forth above with respect to their parent claim since each sets forth additional novel elements of Applicant's container holder.

With respect to the rejection of dependent Claim 9 under 35 U.S.C. §103(a) as being unpatentable over *Schwender* in view of *Davis*, Applicant amended independent Claim 1 and dependent Claim

9. Applicant submits that the rejection has been overcome in view of the foregoing amendments and the remarks that follow.

In the Office Action, the Patent Office alleges:

Schwender...fail(s) to disclose the scale. *Davis* discloses a scale (indicia) on a mat. It would have been obvious to add the scale to the container holders to allow measuring of items placed on the container holders.

Claim 9, as amended, requires a scale displayed on the top surface of the base wherein the scale is related to the plurality of containers. *Davis* fails to teach or to suggest the elements of the present invention which are not taught by *Schwender* as required by amended independent Claim 1 from which Claim 9 depends. Accordingly, the rejection of Claim 9 under 35 U.S.C. §103(a) has been overcome and should be withdrawn. Notice to that effect is requested.

With respect to the rejection of Claim 9 under 35 U.S.C. §103(a) as being unpatentable over *Saylor* in view of *Hough*, *Walton* and/or *Taylor* as applied to Claim 1, and further in view of *Davis*, Applicant amended independent Claim 1 and dependent Claim 9. Applicant submits that the rejection has been overcome in view of the foregoing amendments and the remarks that follow.

In the Office Action, the Patent Office alleges:

...*Saylor* fail(s) to disclose the scale. *Davis* discloses a scale (indicia) on a mat. It would have been obvious to add the scale to the container holders to allow measuring of items placed on the container holders.

Claim 9, as amended, requires a scale displayed on the top surface of the base wherein the scale is related to the plurality of containers. Davis fails to teach or to suggest the elements of the present invention which are not taught by Saylor, Hough, Walton and/or Taylor, taken singly or in combination, as required by amended independent Claim 1 from which Claim 9 depends. Accordingly, the rejection of Claim 9 under 35 U.S.C. §103(a) has been overcome and should be withdrawn. Notice to that effect is requested.

In view of the foregoing remarks and amendments, Applicant respectfully submits that all of the claims in the application are in allowable form and that the application is now in condition for allowance.

If, however, any outstanding issues remain, Applicant urges the Patent Office to telephone Applicant's attorney so that the same may be resolved and the application expedited to issue. Applicant requests the Patent Office to indicate all claims as allowable and to pass the application to issue.

Respectfully submitted,



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CERTIFICATE OF TRANSMISSION

I hereby certify that this **Amendment** and **Transmittal Letter** are being transmitted via telefax to (571)273-8300 on September 24, 2007.



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